

HOUSE BILL 2925  
By Chumney

AN ACT to prohibit unfair denial of health benefit coverage to victims of abuse and to amend Tennessee Code Annotated, Title 56.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Abuse" means the occurrence of one or more of the following acts:

(a) Attempting to cause or intentionally, knowingly or recklessly causing another person, including a minor child, bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse;

(b) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including a minor child, including following the person or minor child without proper authority, under circumstances that place the person or minor child in reasonable fear of bodily injury or physical harm;

(c) Subjecting another person, including a minor child, to false imprisonment; or

(d) Attempting to cause or intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person, including a minor child.

(2) "Abuse-related medical condition" means a medical condition sustained by a subject of abuse which arises in whole or part out of an act or pattern of abuse.

(3) "Abuse status" means the fact or perception that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse-related medical conditions or has incurred abuse-related claims.

(4) "Health benefit plan" or "plan" means a policy, contract, certificate or agreement offered by a carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services. Health benefit plan includes accident only, credit health, dental, vision, Medicare supplement, or long-term care coverage issued as a supplement to liability insurance; automobile medical payment insurance; short-term and catastrophic health insurance policies; and a policy that pays on a cost-incurred basis. Health benefit plan does not include workers' compensation or similar insurance.

(5) "Health carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the cost of health care services including a sickness and accident insurance company, a health maintenance organization, a non-profit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.

(6) "Insured" means a party named on a policy, certificate or health benefit plan as the person with legal rights to the benefits provided by the policy, certificate or health benefit plan. For group insurance, "insured" includes a person who is a beneficiary covered by a group policy, certificate, or health benefit plan.

(7) "Policy" means a contract of insurance, certificate, indemnity, suretyship, or annuity issued, proposed for issuance, or intended for issuance by an insurer, including endorsements or riders to an insurance policy or contract.

(8) "Subject of abuse" means a person to whom a family member, or a current or former household member, intimate partner, or caretaker, or a perpetrator of sexual assault, a stalker or a sex offender has directed an act defined item in (1) of this Section; who has current or prior injuries, illnesses or disorders that resulted from abuse; or who

seeks, may have sought or had reason to seek medical or psychological treatment for abuse, or protection, court-ordered protection or shelter from abuse.

SECTION 2. No insurer or health carrier may engage, directly or indirectly, in an unfairly discriminatory act or practice against a subject of abuse. Notwithstanding any provision of law to the contrary, the discriminatory acts and practices described and prohibited in this act are egregious and are presumed to have been committed in conscious disregard of this act.

SECTION. 3. Any of the following acts are hereby prohibited as unfairly discriminatory:

(1) Denying; refusing to issue, renew or reissue; canceling or otherwise terminating a health benefit plan; or restricting or excluding health benefit plan coverage; or adding a premium differential to any health benefit plan on the basis of the applicant's or insured's abuse status;

(2) Excluding or limiting coverage or denying a claim incurred by an insured as a result of abuse on the basis of the insured's abuse status;

(3) Terminating group coverage for a subject of abuse on the basis of the insured's abuse status where coverage was originally issued in the name of the abuser and the abuser has divorced, separated from, or lost custody of the subject of abuse, or the abuser's coverage has terminated voluntarily or involuntarily. Nothing in this paragraph prohibits the insurer or health carrier from requiring the subject of abuse to pay the full premium for his or her coverage under the health plan or from requiring the subject of abuse to reside or work within its service area. Nothing in this paragraph gives a subject of abuse any greater rights than he or she would otherwise have had to continued coverage under Tennessee or federal law. The continuation coverage required by this section shall be satisfied by any COBRA coverage provided to a subject of abuse and is not intended to be in addition to any coverage provided under COBRA; or

(4) Disclosing or transferring of any information, by a person employed by or contracting with a health carrier, relating to an applicant's or insured's abuse status or

abuse-related medical condition, or the applicant's or insured's status as a family member, employer or associate of, or in a relationship with a subject of abuse, except for purposes related to the provision of health care services or to the processing of claims related thereto, except where required by the commissioner, a court of competent jurisdiction, or abuse reporting laws. Nothing in this section shall preclude a subject of abuse from obtaining his or her own medical records. Nothing in this section shall be construed to prohibit a health carrier from asking an applicant or insured about a medical condition, even if the condition is abuse-related, or using information thereby obtained for the purpose of acts or practices permitted by this act. A subject of abuse, at his or her absolute discretion, may provide evidence of abuse to a health carrier for the limited purpose of facilitating treatment of an abuse-related condition or demonstrating that a medical condition is abuse-related, and nothing in this section shall be construed as authorizing the health carrier to disregard that information.

SECTION 4. A health carrier or insured of an individual or group policy that takes an action that adversely affects a subject of abuse on the basis of an abuse-related medical condition must explain the reason for its action to the applicant or insured in writing and must be able to demonstrate that its action, and any applicable policy provision:

- (1) Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;
- (2) Is not based upon any actual or perceived correlation between a medical condition and abuse;
- (3) Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition without regard to whether the condition or claim is abuse-related; and
- (4) Is based on a determination, made in conformance with sound actuarial principles and supported by reasonable statistical evidence, that there is a correlation between the medical condition and a material increase in insurance risk.

SECTION 5. Health carriers and insurers shall develop, file with the insurance commissioner, and adhere to protocols specifying how company employees, contractors, agents and brokers will pursue an insurance action, including claims investigation and subrogation, that may impact the safety of a subject of abuse involved with that action.

SECTION 6. The commissioner shall conduct a reasonable investigation based on a written and signed complaint received by the commissioner and issue a prompt determination as to whether a violation of this section has occurred. If the commissioner finds from the investigation that a violation of this section may have occurred, the commissioner shall promptly begin proceedings to address the violation through means such as suspension or revocation of certificates of authority or licenses, imposition of civil penalties, imposition of injunctive relief, requiring restitution, referral to prosecutorial authorities or any combination of these. The powers and duties set forth in this section are in addition to all other authority of the commissioner.

SECTION 7. This act shall be known and may be cited as the “Domestic Violence Victims Health Insurance Protection Act”.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.